

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of:

David E. MCDYSAN et al.

Application No.: 09/723,480

Group Art Unit: 2153

Filed: November 28, 2000

Examiner: Bates, K.

Attorney Docket: RIC00044

Client Docket: 09710_1234

For: MESSAGE, CONTROL AND REPORTING INTERFACE FOR A DISTRIBUTED
NETWORK ACCESS SYSTEM

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Commissioner for Patents
Alexandria, VA 22313-1450

Dear Sir:

Applicants respectfully request a pre-appeal brief review be made of the present application for at the least the following clear errors.

- I. THE OFFICE ACTION DISREGARDS THE CLAIMED FEATURES OF “ROUTING A SECOND SUBSET OF THE RECEIVED MESSAGES NOT COMMUNICATED TO THE EXTERNAL PROCESSOR FROM THE NETWORK ACCESS SYSTEM VIA A SECOND NETWORK INTERFACE DIFFERENT FROM THE FIRST NETWORK INTERFACE TO A SECOND NETWORK EXTERNAL TO THE NETWORK ACCESS SYSTEM, WHEREIN THE SECOND NETWORK IS DIFFERENT FROM THE FIRST NETWORK.”**

The Examiner continues to ignore certain features of independent claims 1, 21, and 40.

Each of these claims recites routing a second subset “via a second network interface different from the first network interface, to a second network external to the network access

system, wherein the second network is different from the first network” (claims 1 and 21) or “a second network interface different from the first network interface...a second network different from the first network...wherein the programmable access device forwards a second subset of the input messages not received by the external processor for routing via the second network interface to the second network” (claim 40).

The Examiner has rejected independent claims 1, 21, and 40 under 35 U.S.C. § 102(c) as anticipated by *Albert et al.* (US 6,606,316), contending in particular that Fig. 2A of *Albert et al.* depicts sending a packet from forwarding agent 1, at 231, to the server employs a network different from a network used to send a packet from the forwarding agent to the service manager. The Examiner contends that the forwarding agent has three interfaces to networks, from network 210 to the service manager 1 (241) and to the server (221). However, while the connection between the forwarding agent 231 and network 210 may constitute a “network interface,” there is no indication that the **connection of the forwarding agent to the service manager (241 or 242) or to servers 220** is a “network interface.”

Moreover, the Examiner contends that the “fact that there is a separator [sic] interface no packets sent from the interface with the server can be directly received at the service manager and vise [sic] versa, this shows they are different networks, thus meeting the limitations of the claims” (page 2 of the Advisory Action of October 30, 2007). The Examiner’s reasoning is erroneous because *Albert et al.* fails to teach the claimed different first and second networks and first and second network interfaces.

In the Examiner’s reading of *Albert et al.*, the service manager (241 or 242) is analogous to the claimed “external processor” and the forwarding agent (231 or 232) is analogous to the claimed programmable access device (PAD). Applying this rationale to the present claims, the

forwarding agent may receive messages from a first network (210) external to the system of which the forwarding agent is a part (perhaps the Examiner is equating this system to the claimed network access system). Some of these received messages may be passed directly to a server in 220, while others (a subset?) may be passed to a service manager (241 or 242), or “external processor” in the Examiner’s parlance. But the second subset of received messages routed to the servers 220, by the language of the present claims, is routed “via a second network interface different from the first network interface to a second network external to the network access system, wherein the second network is different from the first network.”

The Examiner’s allegations constitute clear error because there is absolutely no disclosure in *Albert et al.* indicating that servers 220 are in a “network,” that there is any “network interface” connecting the servers 220 with the forwarding agent, or that the so-called “second network” that the Examiner alleges servers 220 are in, is “external to the network access system” of which the forwarding agent is alleged to be a part. In fact, since *Albert et al.* clearly indicates element 210 as a “NETWORK,” it would appear reasonable that if the separate elements 231, 232, 241, and 242 constituted another network, and if the servers 220 constituted still another network, *Albert et al.* would have also labeled these as networks. At best, even if one can reasonably assert that elements 220, 231, 232, 241, and 242 all comprise a network, separate from network 210, then servers 220 would be part of the same network as the forwarding agent and service manager. In this case, servers 220 are **not** in a second network “**external**” to the network access system of the forwarding agent and the service manager, as recited by the present claims.

To conclude that servers 220 in *Albert et al.* are in a different network from, and external to, the “network access system” of the forwarding agent and the service manager is mere

speculation on the part of the Examiner, since *Albert et al.* offers no factual basis to support the Examiner's rejection. "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). A rejection under 35 U.S.C. § 102(e) may not be based on speculation.

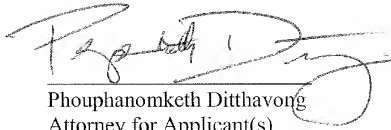
II. CONCLUSION

For the foregoing reasons, the Appeal Brief Panel is respectfully requested to withdraw the rejection of the present application in light of these clear errors and allow the pending claims.

Respectfully Submitted,

DITTHAVONG MORI & STEINER, P.C.

4/28/07
Date


Phouphanomketh Ditthavong
Attorney for Applicant(s)
Reg. No. 44658

918 Prince Street
Alexandria, VA 22314
Tel. 703-519-9952
Fax. 703-519-9958